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BRICK BY BRICK: COVID-19 AND THE WTO

AMOGH PAREEK* & SAHIL VERMA**

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I. INTRODUCTION

We are delighted to bring to you issue 13.2 of Trade, Law and Development! This being a General Issue, we have taken the liberty to bring contemporary ideas to the fore from a broad range of topics. This issue discusses issues ranging from Least Developed Countries (LDCs) in trade to Agriculture, and national security in the World Trade Organization (WTO).

This year has been a difficult year and brought much pain and suffering to the world. While vaccination drives across the world were able to control the spread of the virus, the recent spread of the Omicron variant of COVID-19 has again brought uncertainty. Lockdowns are being imposed in certain regions and countries have imposed travel restrictions again. All of this also leads to obstructions in trade and global value chains, at a time when the world is just recovering from the economic devastation of the previous waves of COVID.

With the economic loss that the countries have suffered, international trade and investment can help with global recovery. The WTO thus, has a huge role to play in recovering from the pandemic. However, it is itself marred with problems. The Appellate Body of the WTO is still dysfunctional, leading to a loss of faith in the system. With States preferring a protectionist approach, there is an image of impasse, and consensus at the negotiations in the WTO often remain elusive.

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Amongst all of this, the twelfth Ministerial Conference (MC-12) of the WTO was supposed to take place from November 30 to December 3, 2021. The MC is the highest decision-making body of the WTO, and as per the Marrakesh Agreement Establishing the World Trade Organization, it shall meet at least once every two years.¹ In the current climate, all eyes were set on the MC-12 in the hopes of some consensus which would reassure the importance of the WTO in these times. However, the MC-12 ended up getting postponed again due to the spread of Omicron variant of the virus.²

In the run up to the MC-12, discussions have been happening on various fronts. The recent cases against sugar subsidies in India³ highlight the importance of agriculture in the WTO, especially for developing countries as they claim that the inequality in Aggregate Measure of Support (AMS) available to developed and developing countries is unfair. Dr. Christian Häberli in this issue critically analyses WTO rules on agriculture, and the measures taken by Countries for food security, while discussing the future developments in WTO and other multilateral forums. Another area where discussions have been going for years are the negotiations on fisheries subsidies. Professor Mukesh Bhatnagar in this issue sheds light on the developments in this regard. Other important areas where discussions have been going on are trade response to the pandemic, electronic tariffs, and plurilateral discussions on services trade, sustainable trade, boosting investment, MSMEs, and addressing gender inequalities. Expectations are still high for countries to reach consensus in some areas, plurilateral if not multilateral. On this note, we believe that this Issue presents a diverse mix of articles and hope that the readers enjoy reading it as much as we enjoyed working on it!

II. CONTENTS OF THE ISSUE

For this General Issue, we have tried to include stimulating discussions of a plethora of pressing international trade issues, such as the promotion of LDC participation in global trade, the inter-relatedness between trade and the goal of sustainable development and the journey of the colonial structure of international law.

We kickstart the Issue with an article by Mr. Shishir Priyadarshi. In this article, Mr. Priyadarshi presents an analysis on the economic growth and development of

¹ Marrakesh Agreement Establishing the World Trade Organization art. IV, Apr. 15, 1994, 1867 U.N.T.S. 154.

² *Twelfth WTO Ministerial Conference*, World Trade Organization, https://www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm.

³ Panel Report, *India — Measures Concerning Sugar and Sugarcane*, WTO Doc. WT/DS579/R, WT/DS580/R, WT/DS581/R (circulated Dec. 14, 2021).

LDCs as a result of the multilateral trading system. At present, there are forty-six LDCs and despite the several important steps taken by the WTO to enhance their position in global trade, LDCs remain marginal participants. Mr. Priyadarshi examines the participation of LDCs in world trade, expanding on decisions taken in WTO which have benefited the LDCs including Duty-Free Quota-Free (DFQF) and Preferential Rules of Origin and further highlights the efforts that are required by the international community to foster growth through trade. In all, this article provides the reader an insight into the participation of LDCs in the multilateral trading system and how this remains a yardstick for WTO's success. The editorial team assisting Mr. Priyadarshi in this article consisted of Nishant Sharma, Akshita Saxena and Vipashyana Hilsayan.

The next article is contributed by Professor Leal-Arcas et al. In light of the changing climatic conditions, this article explores the inter-relatedness between trade and the goal of sustainable development. The authors examine the relevance and contribution of various trade agreements towards the achievement of sustainable development. Thereafter, it focuses on the free trade agreements in special relation to small Pacific-island developing states. While highlighting the need for liberalisation of trade in renewable energy, it also argues for the restriction of support granted to fossil fuel related trade. The article concludes by providing recommendations on the response of the international trade community.

In the next article, Mr. Jason Beckett traces the journey of the colonial structure of international law, ranging from the era of decolonisation to the modern neo-colonial order. Whilst setting up the context, he analyses various events such as the formation of the UN, State of Israel and the Universal Declaration of Human Rights. The editorial team assisting Mr. Beckett consisted of Sukanya Viswanathan, Malaika Shivalkar, Yashvi Hora and Simran Bherwani.

Fisheries subsidies negatively affect the long-term sustainability of the ecosystem because they lead to overcapacity, which is already under threat from climate change, invasive species and pollution. Fishing subsidies have come under increasing scrutiny from conservationists and politicians alike. Accordingly, in 2001, negotiations on fisheries subsidies at the WTO were mandated. Despite ongoing discussion for nearly twenty years, leaders are yet to reach an agreement because of various challenges faced by them. Professor Mukesh Bhatnagar, in his article, examines such challenges with an aim to provide a balance between the rights and obligations of Members under existing international instruments on fisheries and the new obligations that will emerge from the disciplines. In doing so, he analyses instruments governing marine resources or jurisdiction or rights of coastal states under the United Nations Convention on the Law of the Sea (UNCLOS). He also discusses the approach to be taken while prohibiting fisheries

subsidies, special and differential treatment (S&DT) for developing countries, and non-fuel subsidies treatment. The editorial team assisting Professor Bhatnagar in this article consisted of Pranav Karwa, Ria Chaudhary, and Lipika Singla.

In a time where countries openly disregard WTO Rules, achieving the SDG Goal 2 of feeding ten billion people sustainably by 2050 seems bleak. In the next article, Dr. Christian Häberli primarily discusses what comprises the “food security toolbox” and maps out, taking into consideration the food crises of 2007-09 and COVID-19, how countries have aggravated the situation by using the wrong toolbox measures. In this regard, the author also analyses WTO’s failure to govern the food policy sphere properly. Nevertheless, the author states that food security improvements still remain possible; but this requires concerted and deliberate efforts, both by the countries and the WTO, to balance policy space and market access, which are like two competing sides of the same coin. In this light, the author concludes by providing a list with *eight baskets*, which includes support measures for poor farmers’ production (notwithstanding WTO constraints), risk management tools and investment contracts for trade agreements, and directly trade-relevant food security measures (possibly requiring adjustments to WTO rules). The editorial team for this article comprised Swikruti Nayak, Ananya Awasthi, and Priyanshu Shrivastava.

The Security Exceptions provision in the GATT is widely debated, absent any guidelines as to its interpretation, and had not featured eminently in the WTO litigation until the recent Panel Reports in *Russia — Traffic in Transit* and *Saudi Arabia — IPRs* which are the first cases providing certainty to the scope of these provisions. The WTO has tried to balance the control exercised over the expansive interpretation to ensure fulfilment of obligations and the discretion allowed to the Members in light of their sovereignty such that the interests of the trading interests of any Member Party are not undermined. Ms. Apoorva Vishnoi and Mr. Rishabha Meena in their article, provide an in-depth analysis of the two cases and their implications generally and in juxtaposition with other FTAs, especially the Indian FTAs, while the authors trace the different approaches that have been taken by the Member States in these agreements. The editorial team assisting the authors comprised Abilash Viswanathan, Anushka Mathur and Aarzoo Gang.

III. RECENT DEVELOPMENTS

Since its launch, the TL&D website has remained a mainstay of the Journal's publication infrastructure as a powerful tool through which we were able to maintain our commitment to the Budapest Open Access Initiative, and enabling access to cutting-edge academic thought in the field of International Economic Law without a paywall. We had previously discussed the hardship faced by the Board with respect to the Journal’s website — which had been a victim of virus

attacks and general logistical issues in the past. We are delighted to announce that the new website project that had been commissioned finally came to conclusion in August 2021, and our new website is now up and running.

This issue marks the first issue to be published entirely on the new website, after its launch in September, 2021. At this juncture, it would be apt to express the Board's appreciation to Mr. Shivam Trivedi, who was responsible for the updation of the website scripts on to the servers and ensuring that it retains the functionality as per the requirements of the Board. Thanks are also due to Jahnvi Srivastava, Priyanshu Srivastava, Nidhi Lakhotia, Simran Bherwani and Sneha Naresh, who were instrumental in ensuring that there was no loss of data during the transition.

The new website features a brand new Graphical User Interface, and is built on the latest scripting language, thus vastly improving the look, feel, responsiveness and usability of the website. The Board is confident that the upgrade will provide readers and authors alike with a more fulfilling user experience.

IV. ACKNOWLEDGEMENTS AND CONCLUSION

On behalf of the entire Board, we would like to extend our thanks to the Journal's Patron and University's Vice Chancellor, Prof. Poonam Saxena. Her constant support has ensured that the Journal continues to grow strength-to-strength every year. Moreover, we express our deepest gratitude to Mrs. Neha Giri, the University Registrar, who was at the helm of commissioning the project for our website development and all other publication activities of the Journal.

We are also very fortunate to have Dr. Rosmy Joan as our Faculty-in-Charge, who has been instrumental in managing all aspects of the Journal - ranging from appointment of the staff, to printing requests and to major developments like the website project.

Thanks are also due to our Consulting Editors, who have been incredibly supportive to us every step of the way. They have helped us navigate a plethora of challenges that come with managing a journal; be it issues related to the publication, or logistical issues such as the website; we have benefited greatly from their support.

It must also be mentioned that the Journal cannot run smoothly without support from several quarters of the University administration. We are thankful to Mr. Vinod D., Head Librarian of the University, for his invaluable assistance in managing our database of subscribers, and in helping us maintain the accountability of our subscriptions. Moreover, Mr. Balkishan Sharma has been

immensely helpful to us in liaising with the printing firms and ensuring timely dispatch of the printed copies, and we thank him for the same.

No vote of thanks can be complete without thanking the editors on the Board, who have worked tirelessly to ensure that this Issue sees the light of day. Managing a myriad of activities at law school along with meticulously handling editorial commitments is no mean feat, and our editors have truly exemplified that through their diligent work on this Issue. We would like to extend our deepest thanks to them, with the certainty that they will continue to keep up the stellar work through the next Special Issue, and the Issues thereafter.

Lastly, we would like to thank you – the reader – without whom all this effort would be in vain. We truly believe that this Issue will be worth your time, and hope that it adds great value to the international trade law literature around the world!